IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

FRIDAY, THE 19TH JANUARY 2007 / 29TH PAUSHA 1928

WP(C).No. 29670 of 2006(F)

OS.325/2002 of ADDL.M.C.-II,KOZHIKODE

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PETITIONER:

T.T.SURESH BABU, S/O.VENUGOPAL,
AGED 40 YEARS, `SREEJA BHAVAN',
MAYANAD AMSOM, DESOM, KOZHIKODE TALUK.

BY ADV. SRI.NIRMAL. S

RESPONDENTS:

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1. SULOCHANA, D/O.LATE CHERUTTY,
KOLANGAREDATHUMEETHAL VEEDU, MAYANAD AMSOM,
DESOM, KOZHIKODE TALUK.

2. GIRIJA BHAI, D/O.GOPALAN NAIR,
`SREEJA BHAVAN', MAYANAD AMSOM, DESOM,
KOZHIKODE TALUK.

3. JANU, D/O.KUTTAN, DWARAKA, NJELIYAN
PARAMBU, MAYANAD AMSOM, DESOM,
KOZHIKODE TALUK.

4. GANGADHARAN NAIR, S/O.GOVINDAN NAIR,
`SREENILAYAM', MAYANAD AMSOM, DESOM,
KOZHIKODE TALUK.

BY ADV. SRI.K.BIJESH
SRI.DINESH R.SHENOY FOR R1
SMT.K.M.SUBHISHA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXTS:-

EXT.P1 TRUE COPY OF THE PLAINT IN O.S.NO.325/2002 ON THE FILE OF THE MUNSIFF'S COURT, KOZHIKODE

EXT.P2 TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE PETITIONERS AND RESPONDENTS 2 TO 4 IN O.S.325/2002 DATED 03/09/2002.

EXT.P3 TRUE COPY OF THE COMMISSIONER'S REPORT AND PLAN DATED 10/06/2002

EXT.P4 TRUE COPY OF THE I.A.NO.3678/2002 IN O.S.325/2002 DATED 11/09/2002

EXT.P5 TRUE COPY OF THE ORDER DATED 21/08/2006 IN I.A.3678/2002 IN O.S.325/02 OF THE ADDITIONAL MUNSIFF-II, KOZHIKODE

\\TRUE COPY //

M.SASIDHARAN NAMBIAR, J.

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W.P.(C)No.29670 OF 2006

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DATED THIS THE 19TH DAY OF JANUARY, 2007

JUDGMENT

Petitioner is 2nd defendant in O.S.325 of 2002 on the file of Additional Munsiff Court-II, Kozhikode. First respondent is plaintiff and other respondents, other defendants. The suit is one for permanent prohibitory injunction. A Commission was taken out at the time of institution of the suit. The Commissioner inspected the property and submitted a report without notice to defendants. Defendants filed I.A.3678 of 2002, an application to remit the report which was dismissed under Ext.P5 order. This petition is filed under Article 227 of Constitution of India challenging Ext.P5 order.

2. Heard learned counsel appearing for petitioner and the first respondent.

3. On going through Ext.P5 order and hearing arguments of the learned counsel appearing for petitioner and respondents, I do not find any reason to interfere with Ext.P5 order in exercise of the supervisory jurisdiction of this court. The suit is

only for injunction. What was contended by defendants is that first respondent/plaintiff had annexed a portion of the existing road to his property and Commissioner has not properly identified the property and has not shown the exact lie of the road. The learned counsel appearing for first respondent pointed out that defendants have filed another suit in respect of the road raising the very same contentions and a Commission has already been appointed and the Commissioner has submitted report and both the suits are jointly tried. In the circumstances of the case, it is not necessary to remit the exparte report submitted by Commissioner as sought for. It is clear from the report itself that the inspection was made without notice to defendants and was not in their presence and the properties were not properly identified. Petitioner is entitled to raise the objections on the identity of the property in the report at the time of evidence. Petitioner is entitled to raise all the objections raised herein before the court below in the suit.

Writ petition is dismissed.

M.SASIDHARAN NAMBIAR, JUDGE

lgk/-